

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
OHIO FERRO-ALLOYS CORPORATION,

Appellant,

vs.

PUGET SOUND AIR POLLUTION
CONTROL AGENCY,

Respondent.

PCHB No. 218

FINDINGS OF FACT,
CONCLUSIONS AND ORDER

This matter, the appeal of a \$250.00 civil penalty for the alleged violation of respondent's air contaminant emission regulations, came before two members of the Pollution Control Hearings Board (James T. Sheehy and Walt Woodward) in the Tacoma law offices of Burkey, Marsico, Rovai & McGoffin at 2:30 p.m., February 20, 1973.

Appellant appeared through its plant manager, F. R. Yadeskie, respondent through its counsel, Keith D. McGoffin. Eugene Barker, Tacoma court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 From testimony heard, exhibits examined and from a review of the
3 transcript, the Pollution Control Hearings Board prepared Proposed
4 Findings of Fact, Conclusions and Order which were submitted to the
5 appellant and respondent on April 13, 1973. No objections or exceptions
6 to the Proposed Findings, Conclusions and Order having been received,
7 the Pollution Control Hearings Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 Shortly after 2:00 p.m. on October 11, 1972, from the bag house of
11 appellant's plant at 3001 Taylor Avenue, Tacoma, Pierce County, blue
12 smoke darker in shade than No. 2 on the Ringelmann chart was emitted
13 for at least 20 minutes.

14 II.

15 As a result of this observed emission, respondent cited appellant
16 in its Notice of Violation No. 6431 for a violation of Section 9.03(a)(1)
17 of respondent's Regulation I, and in connection therewith appellant
18 subsequently was served with respondent's Notice of Civil Penalty
19 No. 492 in the maximum allowable amount of \$250.00. The penalty is the
20 subject of this appeal.

21 III.

22 Section 9.03(a)(1) of respondent's Regulation I makes it unlawful
23 to cause or allow the emission of any air contaminant for more than three
24 minutes in any hour of a shade darker than No. 2 on the Ringelmann chart.

25 IV.

26 At the time of the instant matter, appellant had in its employee a

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 crew of six or seven persons whose duty it was to maintain the operation
2 of the bag house. Included in this duty was the responsibility of
3 monitoring emissions for possible infractions of respondent's
4 Regulation I, the terms of which were known to and understood by
5 appellant.

6 From these Findings of Fact, the Pollution Control Hearings Board
7 comes to these

8 CONCLUSIONS

9 I.

10 Appellant was in violation of Section 9.03(a)(1) of respondent's
11 Regulation I on October 11, 1972.

12 II.

13 Appellant contends that respondent first should have advised
14 appellant of the violation. When considered in connection with
15 respondent's duty to enforce clean air regulations throughout Tacoma's
16 large industrial area, this contention can be likened to a speeding
17 motorist on a crowded freeway wishing that a police officer first would
18 warn him rather than issue a ticket. Appellant knew his clean air
19 responsibilities and cannot expect to escape them by hoping that
20 respondent's inspectors will do his monitoring for him.

21 III.

22 In view of the circumstances, the instant civil penalty appears to
23 be reasonable.

24 THEREFORE, the Pollution Control Hearings Board issues this

25 ORDER

26 The appeal is denied.

27 FINDINGS OF FACT,
CONCLUSIONS AND ORDER

1 DONE at Lacey, Washington this 5th day of June, 1973.

2 POLLUTION CONTROL HEARINGS BOARD

3 Walt Woodward
4 WALT WOODWARD, Chairman

5 W. A. Gissberg
6 W. A. GISSBERG, Member

7 James T. Sheehy
8 JAMES T. SHEEHY, Member
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26 FINDINGS OF FACT,
27 CONCLUSIONS AND ORDER